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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

15 | EDGAR SOLIS,

Plaintiff,

17 | VS.

18 STATE OF CALIFORNIA; MICHAEL
BELL; and DOES 1-10, inclusive.

Defendants

| Case No.: 5:23-cv-00515-HDV-JPR

[Honorable Hernán D. Vera]

**PLAINTIFF'S [PROPOSED]
AMENDED DISPUTED JURY
INSTRUCTION**

Final Pretrial Conference:

Date: February 4, 2025

Time: 10:00 a.m.

Trial:

Date: February 18, 2025

Time: 09:00 a.m.

Place: Courtroom 10D

1 **TO THIS HONORABLE COURT AND ALL PARTIES AND THEIR
2 ATTORNEYS OF RECORD:**

3 By and through his attorneys of record in this action, Plaintiff Edgar Solis
4 hereby submits the following Plaintiff's Disputed Jury Instruction to be provided to
5 the jury at trial, pursuant to Federal Rules of Civil Procedure 16 and 51; United
6 States District Court, Central District of California Local Rules 16-2, 16-3, 16-4, 16-
7 5, 16-6, 16-7, 16-8, 51-1, 51-2, 51-3 and 51-4 (as applicable); and the applicable
8 Orders of the Court.

9 Plaintiff reserves the right to amend his [Proposed] Jury Instructions, subject
10 to any objections, motions *in limine*, and applicable Orders of the Court.

11
12 Respectfully Submitted,

13 DATED: February 4, 2025

14 **LAW OFFICES OF DALE K. GALIPO
LAW OFFICES OF GRECH & PACKER**

15 By: /s/ *Marcel F. Sincich*
16 Dale K. Galipo
17 Marcel F. Sincich
Trent C. Packer
Attorney for Plaintiff

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1 **PLAINTIFF'S PROPOSED DISPUTED INSTRUCTIONS**

2 **34. BANE ACT—ESSENTIAL FACTUAL ELEMENTS (CIV. CODE §
3 52.1)**

4 Edgar Solis claims that defendant Officer Michael Bell ~~intentionally~~
5 ~~interfered with his civil rights by threats, intimidation, or coercion~~violated the Bane
6 Act. To establish this claim, Edgar Solis must prove all of the following:

- 7
- 8 1. That defendant Michael Bell ~~acted violently against Edgar Solis to~~
9 ~~prevent him from exercising his right to vote be free from used~~
10 excessive force against Mr. Solis ~~for having exercised his right~~;
11 2. That defendant Officer Michael Bell intended to deprive plaintiff Edgar
12 Solis' of his ~~enjoyment of the interests protected by the~~ right to be free
13 from excessive force ~~as guaranteed by the Fourth Amendment of the~~
14 United States Constitutionby acting with a reckless disregard to those
15 rights;
16 3. That Edgar Solis was harmed; and
17 4. That defendant Officer Bell's conduct was a substantial factor in
18 causing Edgar Solis' harm.

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20 Source: CACI No. 3066, (2024 Edition); *Reese v. Cty. of Sacramento*, 888 F.3d
21 1030, 1042 (9th Cir. 2018) (holding that section 52.1 does not require a showing of
22 threats, intimidation and coercion separate from an underlying constitutional
23 violation); *see also Cornell v. City and County of San Francisco*, 225 Cal. Rptr. 3d
24 at 382-83 (2017) (holding that “[n]othing in the text of the statute requires that the
25 offending ‘threat, intimidation or coercion’ be ‘independent’ from the constitutional
26 violation alleged” and “that the use of excessive force can be enough to satisfy the
27 ‘threat, intimidation or coercion’ element of Section 52.1.”); *Cornell*, 225 Cal. Rptr.
28 3d at 384 (holding that the Bane Act requires a specific intent to violate the

1 arrestee's right to freedom from unreasonable seizure); *Reese*, 888 F.3d at 1045
2 (holding that a reckless disregard for a person's constitutional rights is evidence of a
3 specific intent to deprive that person of those rights).

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DEFENDANTS' OBJECTIONS

2 Defendants objects to Plaintiff's modified proposed instruction NO. 34 Re
3 Bane Act which is modified from the Ninth Circuit Model Jury Instructions and
4 omits key elements from the model instruction. CACI 2024 does not include this
5 language; if judicial council intended to add it, it could have done so. This language
6 is legally incorrect and confusing - how does a jury know what it means to
7 intentionally violate the Bane Act? – and there is no such claim - it is a violation of
8 civil rights, not the Bane Act itself, that forms the basis of the cause of action.
9 Maybe the instruction could be revised to state “intentionally violated his right to be
10 free from excessive force as guaranteed by the Fourth Amendment of the United
11 States Constitution.”

12 Defendants contend the proposed modified instruction is argumentative, is
13 misleading and unfairly prejudicial. Fed. R. Evid. 403.

PLAINTIFF'S STATEMENT IN SUPPORT

Plaintiff contends that Plaintiff's proposed instruction accurately reflects the state of the law regarding the Bane Act. Specific intent may be shown by a reckless disregard for constitutional rights of an individual. *See Reese v. County of Sacramento*, 888 F.3d 1030, 1043 (9th Cir. 2018). Further, Plaintiff's proposed instruction is clear and avoids jury confusion.

1 **41. ALTERNATIVE CAUSE**

2 You may decide that more than one of the defendants-involved officers was
3 used unreasonable forcenegligent, but that the negligence-unreasonable force of only
4 one of them could have actually caused a portion of [name of plaintiff]Edgar Solis's
5 harm. If you cannot decide which defendant officer caused any portion of [name of
6 plaintiff]Mr. Solis's harm, you must decide that each defendant officer is
7 responsible for thate harm.

8 However, if a-the defendant proves that [he/she/nonbinary pronoun/it] did not
9 cause a portion of [name of plaintiff]Mr. Solis's harm, then you must conclude that
10 defendant is not responsible.

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12 Source: CACI No. 434, (2024 Edition).

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DEFENDANTS' OBJECTIONS

This language is not in the CACI instruction, which is meant for a *Summers v. Tice* type of situation which is not present here. It overemphasizes plaintiff's theory of the case.

PLAINTIFF'S STATEMENT IN SUPPORT

2 Plaintiff anticipates that Defendants will argue that Officer Bell did not cause
3 Plaintiff's damages. However, where two persons are engaged in the use of
4 firearms and unreasonably injured another, both are liable for the injury suffered by
5 the third person. *Summers v. Tice*, 33 Cal. 2d 80, 84 (1948). "Summers applies to
6 multiple *tortfeasors* not to multiple *defendants*, and it is immaterial in this case that
7 the matter went to trial only as against respondent, for A, B, and/or C was also a
8 tortfeasor." *Vahey v. Sacia*, 126 Cal.App.3d 171, 177 (1981) (original italics,
9 footnote omitted). This concept has been recognized in Section 1983 cases. See,
10 e.g., *J.J.D. v. City of Torrance*, No. CV-1407463-BRO-MRWx, 2016 WL 6674995,
11 at *5 (C.D. Cal. June 23, 2016); *Mendez v. Cnty. of Los Angeles*, No. CV 11-04771-
12 MWF PJWx, 2013 WL 4202240, at *34 (C.D. Cal. Aug. 13, 2013); *Richman v.*
13 *Sheahan*, 512 F.3d 876, 884 (7th Cir. 2008); *Fillmore v. Page*, 358 F.3d 496, 507
14 (7th Cir. 2004); *Manelski v. Tinicum Twp.*, No. CIV A 07-1487, 2008 WL 5250691,
15 at *2 (E.D. Pa. Dec. 17, 2008).

1 **42. INTEGRAL PARTICIPATION**

2 As it relates to any harm that you find was from shots fired by Deputy
3 Salvador Waltermire, Defendant Officer Bell may be held liable if you find that he
4 was an “integral participant” in the unlawful act.

5 A person deprives another of a constitutional right, within the meaning of §
6 1983, if he does an affirmative act, participates in another’s affirmative act, or omits
7 to perform an act which he is legally required to do that causes the deprivation of
8 which complaint is made. The requisite causation can be established either by some
9 kind of direct personal participation in the deprivation or by setting in motion a
10 series of acts by others which the actor knows or reasonably should know would
11 cause others to inflict the constitutional injury. Thus, an officer could be held liable
12 where he is just one participant in a sequence of events that gives rise to the alleged
13 constitutional violation.

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15 Source: Ninth Circuit Manual of Model Civil Jury Instructions (2017 Edition, Last
16 Updated June 2024), Instruction 9.2. Modified by *Nicholson v. City of Los Angeles*,
17 935 F.3d 685, 691 (9th Cir. 2019); *Blankenhorn v. City of Orange*, 485 F.3d 463,
18 481 n.12 (9th Cir. 2007); *Mendez v. Cnty. of Los Angeles*, 897 F.3d 1067, 1073, fn.
19 1 (9th Cir. 2018); *Peck v. Montoya*, 51 F.4th 877, 889 (9th Cir. 2022); *Reynaga*
20 *Hernandez v. Skinner*, 969 F.3d 930, 941 (9th Cir. 2020).

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DEFENDANTS' OBJECTIONS

Under Ninth Circuit cases, an official whose individual actions do not rise to the level of a constitutional violation “may be held liable under section 1983 only if the official is an ‘integral participant’ in the unlawful act.” *Peck v. Montoya*, 51 F.4th 877, 889 (9th Cir. 2022) (quoting *Reynaga Hernandez v. Skinner*, 969 F.3d 930, 941 (9th Cir. 2020)). An official may be deemed an “integral participant” in a constitutional violation, “only if (1) the defendant knew about and acquiesced in the constitutionally defective conduct as part of a common plan with those whose conduct constituted the violation, or (2) the defendant set in motion a series of acts by others which the defendant knew or reasonably should have known would cause others to inflict the constitutional injury.” Id. at 891; see *Spencer v. Pew*, 117 F.4th 1130, 1144-45 (9th Cir. 2024) (rejecting plaintiff’s claim that two officers were integral participants in a third officer’s use of excessive force because plaintiff did not present evidence that two of the officers knowingly acquiesced in a third officer’s unlawful conduct as a part of a common plan with him or evidence that the two officers’ conduct set in motion acts that they reasonably should have known would cause the third officer to engage in unlawful conduct).

PLAINTIFF'S STATEMENT IN SUPPORT

2 A police officer’s liability under section 1983 may be predicated on his
3 integral participation in the alleged violation. *Nicholson v. City of Los Angeles*, 935
4 F.3d 685, 691 (9th Cir. 2019) (quoting *Blankenhorn v. City of Orange*, 485 F.3d
5 463, 481 n.12 (9th Cir. 2007)). An “officer could be held liable where he is just one
6 participant in a sequence of events that gives rise to [the alleged] constitutional
7 violation.” *Nicholson*, 935 F.3d at 692. Specifically, “integral participation” does
8 not require that each officer’s actions themselves rise to the level of a constitutional
9 violation. *Boyd v. Benton Cnty.*, 374 F.3d 773, 780 (9th Cir. 2004).

10 An officer is an “integral participant” where he or she has some fundamental
11 involvement in the conduct that allegedly caused the violation. *See Blankenhorn v.*
12 *City of Orange*, 485 F.3d 463, 481, fn. 12 (9th Cir. 2007); *Mendez v. Cnty. of Los*
13 *Angeles*, 897 F.3d 1067, 1073, fn. 1 (9th Cir. 2018); *Reynaga Hernandez v. Skinner*,
14 969 F.3d 930, 941 (9th Cir. 2020); *Hopkins v. Bonvicino*, 573 F.3d 752, 770 (9th
15 Cir. 2009). More than a mere bystander. *See Bravo v. City of Santa Maria*, 665
16 F.3d 1076, 1090 (9th Cir. 2011).

1 **43. WEAPON IN HAND IS NOT ENOUGH**

2 The mere fact that a suspect possesses a weapon does not justify deadly force.

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4 Source: *Hayes v. Cnty. of San Diego*, 736 F.3d 1223, 1233 (9th Cir. 2013) (citation
5 omitted); *George v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013); *Glenn v. Washington*
6 *County*, 673 F.3d 864, 872-73 (9th Cir. 2011); *Harris v. Roderick*, 126 F.3d 1189,
7 1204 (9th Cir. 1997); *Curnow v. Ridgecrest Police*, 952 F.2d 321, 323, 325 (9th Cir.
8 1991); *Lopez v. Gelhaus*, 871 F.3d 998, 1008-1010 (9th Cir. 2017).

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DEFENDANTS' OBJECTIONS

This instruction is already subsumed in Ninth Cir. Mode Instr. No. 9.25, and it overemphasizes plaintiff's theory of the case.

PLAINTIFF'S STATEMENT IN SUPPORT

Plaintiff contends that it must be made clear to the jury that officers cannot use deadly force against a person merely for having a gun in their hand or in their possession. “[T]he mere fact that a suspect possesses a weapon does not justify deadly force.” *Hayes v. Cnty. of San Diego*, 736 F.3d 1223, 1233 (9th Cir. 2013) (citation omitted). The fact that a suspect has a deadly weapon does not render the use of deadly force reasonable. *See George v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013); *Glenn v. Washington County*, 673 F.3d 864, 872-73 (9th Cir. 2011); *see also Harris v. Roderick*, 126 F.3d 1189, 1204 (9th Cir. 1997) (“Law enforcement officials may not kill suspects who do not pose an immediate threat to their safety or to the safety of others simply because they are armed.”); *Curnow v. Ridgecrest Police*, 952 F.2d 321, 323, 325 (9th Cir. 1991) (holding that deadly force was unreasonable where, according to the plaintiff’s version of facts, the decedent possessed a gun but was not pointing it at the officers and was not facing the officers when they shot him); *Lopez v. Gelhaus*, 871 F.3d 998, 1008-1010 (9th Cir. 2017) (finding the armed subject’s position and movement immediately prior to the shooting did not support a reasonable belief of a threat).

1 **44. SUBSEQUENT MEDICAL TREATMENT**

2 If you decide that ~~[name of defendant]~~Defendant Officer Bell is legally
3 responsible for ~~[name of plaintiff]~~Edgar Solis's harm, ~~[he/she/nonbinary pronoun/it]~~
4 is also responsible for any additional harm resulting from the acts of others in
5 providing medical treatment or other aid that ~~[name of plaintiff]~~Mr. Solis's injury
6 reasonably required, even if those acts were negligently performed.

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8 Source: CACI No. 3029, (2024 Edition).

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DEFENDANTS' OBJECTIONS

If this is included, the verdict form needs to allocate fault to the “others” referred to in this instruction (i,e, other police officers, medical providers, former Defendants, etc..). Also, the correct CACI is 3929, not 3029.

PLAINTIFF'S STATEMENT IN SUPPORT

This instruction is proposed in anticipation of the Defendants' arguing that a provider's negligence was the cause of Plaintiff's damages. If the argument is not made and there is no evidence of a provider's potential wrongdoing, this instruction may not be necessary. It has long been the rule that a tortfeasor responsible for the original accident is also liable for injuries or death occurring during the course of medical treatment to treat injuries suffered in that accident. *See Ash v. Mortensen*, 24 Cal.2d 654 (1944); *see also Anaya v. Superior Court*, 78 Cal.App.4th 971, 974 (2000); *Hastie v. Handeland*, 274 Cal.App.2d 599, 604-605 (1969); *see also Henry v. Superior Court*, 160 Cal. App. 4th 440, 449-452 (2008) (citing cases).